Michael K. Jeanes, Clerk of Court
*** Filed ***
01/17/2012 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000594-001 DT 01/11/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

ANDREA L KEVER

v.

JOSE RAMON JUAREZ (001)

STEVEN W MCCLURE

REMAND DESK-LCA-CCC
SOUTH MOUNTAIN JUSTICE COURT

RECORD APPEAL RULING / REMAND

Lower Court Case No. CT2011058727

Defendant-Appellant Jose Ramon Juarez (Defendant) was convicted in South Mountain Justice Court of failure to drive in one lane—unsafe lane change. Defendant contends the trial court erred. For the reasons stated below, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On March 18, 2011, Defendant was charged with violating A.R.S. § 28–729(1) (failure to drive in one lane—unsafe lane change). On May 27, 2011, the trial court held a bench trial. Based on the evidence presented, the trial court found that Defendant violated the charged offense. On May 27, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID DEFENDANT PROPERLY PRESERVE AND PRESENT HIS ISSUES FOR APPEAL.

Counsel for Defendant alleges he could not open the audio recording (CD) of the May 27, 2011, bench trial. Neither the State, nor this Court, had any difficulty doing so. The record is devoid of any evidence showing counsel for Defendant made any efforts to contact the trial court for assistance, or that he requested a transcript from the trial court. Defendant has submitted an appellate memorandum that fails to reference the record. Accordingly, Defendant's appellate memorandum fails to comply with Rule 8(a)(3), Super. Ct. R. App. P.—Civil, which states:

> Memoranda shall include a short statement of the facts with ***reference to the record,*** a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.

(Emphasis added.) This Court "is not required to assume the duties of an advocate and search voluminous records and exhibits" to substantiate a party's claims. *Adams v. Valley National Bank*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (Ct. App. 1984). When a litigant fails to include citations to the record in an appellate brief, the court may disregard that party's unsupported factual narrative and draw the facts from the opposing party's properly-documented brief and the record on appeal. Rule 31.13(c)(1)(ii), Ariz. R. Crim. P. *See Arizona D.E.S. v. Redlon*, 215 Ariz. 13, 156 P.3d 430, ¶ 2 (Ct. App. 2007). Fundamental error aside, allegations without specific contentions or references to the record do not warrant consideration on appeal. *State v. Cookus*, 115 Ariz. 99, 104, 563 P.2d 898, 903 (1977). Fundamental error rarely exists in civil cases. *See Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37, ¶ 23 (Ct. App. 2005) (explaining that courts apply the doctrine sparingly and that fundamental error is error going to the case's very foundation that prevents a party from receiving a fair trial). *See also Bradshaw v. State Farm Mutual Auto. Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) (doctrine of fundamental error in civil cases may be limited to situations when a party was deprived of a constitutional right). This Court finds no fundamental error in the record.

Even if Defendant had properly presented his second issue for appeal by referencing the record, he did not preserve it for appeal; Defendant failed to raise this issue below. Failure to raise an issue at trial waives the right to raise the issue on appeal. *State v. Gatliff*, 209 Ariz. 362, 102 P.3d 981, ¶ 9 (Ct. App. 2004). It is particularly inappropriate to consider an issue for the first time on appeal when the issue is a fact-intensive one. *State v. West*, 176 Ariz. 432, 440–41, 862 P.2d 192, 200–01 (1993); *State v. Rogers*, 186 Ariz. 508, 511, 924 P.2d 1027, 1030 (1996); *State v. Brita*, 158 Ariz. 121, 124, 761 P.2d 1025, 1028 (1988). The Arizona courts have held that if a defendant does not object at trial, the appellate court will review only for fundamental error, and will grant relief only if the defendant proves both that the trial court erred and that any error prejudiced the defendant. *State v. Kiles*, 222 Ariz. 25, 213 P.3d 174, ¶ 16 (2009); *State v. Valverde*, 220 Ariz. 582, 208 P.3d 233, ¶ 12 (2009); *State v. Forte*, 222 Ariz. 389, 214 P.3d 1030, ¶¶ 14, 22 (Ct. App. 2009); *State v. Fimbres*, 222 Ariz. 293, 213 P.3d 1020, ¶¶ 41–42 (Ct. App. 2009). Again, This Court finds no fundamental error in the record.

For his third issue, Defendant incorrectly argues that the officer failed to testify regarding the jurisdiction and location of the violation. The officer testified concerning the address of the violation and that is was within the jurisdiction of the trial court.[1]

Finally, to the extent that Defendant is challenging the sufficiency of the evidence, this Court has carefully considered the record. Based on the evidence presented at trial, any reasonable trier of fact could have concluded that Defendant violated the charged offense.

[1] Audio recording of the May 27, 2011, bench trial, 08:58:34–40.

III. CONCLUSION.

Based on the foregoing, this Court concludes Defendant failed to properly preserve and present his issues for appeal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the South Mountain Justice Court.

IT IS FURTHER ORDERED remanding this matter to the South Mountain Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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